

FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

THEIS RESEARCH, INC., (TRI), an
Illinois corporation,
Plaintiff-Appellant,

v.

BROWN & BAIN, a California and
Arizona law firm, and such

present and former Brown & Bain

partners, associates, and other

personnel responsible for the
management and trial of all
litigation involving Peter F. Theis
and Theis Research, Inc.,
Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of California
Ronald M. Whyte, District Judge, Presiding

Submitted January 10, 2001
Pasadena, California

Filed January 24, 2001

Before: Stephen S. Trott, Sidney R. Thomas and
Marsha S. Berzon, Circuit Judges.

Per Curiam Opinion

1 The panel unanimously finds this case suitable for decision without
oral argument. See Fed. R. App. P. 34(a)(2).

1157

COUNSEL

Paul R. Johnson, Filice Brown Eassa & McLeod LLP, Oak-

No. 00-15219

D.C. No.

CV-99-20645-RMW

OPINION

land, California, for the appellant.

Paul A. Renne, Cooley Godward LLP, San Francisco, California, for the appellee.

OPINION

PER CURIAM:

Theis Research, Inc. ("TRI"), appeals the district court's (1) grant of defendant Brown & Bain's motion to dismiss for failure to state a claim and (2) dismissal without prejudice, on venue grounds, of TRI's motion to vacate an arbitration award.

The district court's dismissal without prejudice of TRI's motion to vacate was properly based on Sunshine Beauty Supplies, Inc. v. United States District Court, 872 F.2d 310, 312 (9th Cir. 1989), which held that venue dictated by 9 U.S.C. § 10 was mandatory. Applying Sunshine Beauty Supplies to this case would have required the motion to vacate to be heard in the District of Columbia, where the arbitration occurred.

However, while this appeal was pending, the Supreme Court held that the venue provisions of 9 U.S.C. § 10 are permissive, not mandatory. Cortez Byrd Chips, Inc. v. Bill Herbert Constr. Co., 120 S. Ct. 1331, 1334 (2000). Thus, venue in the Northern District of California may have been proper. Accordingly, we must vacate the district court's order and remand for reconsideration in light of Cortez Byrd Chips.

We vacate as premature the district court's order granting Brown & Bain's motion to dismiss. The validity of the arbi-

1158

tration award must be determined prior to assessing whether the award precludes TRI's current claims. Further, TRI's assertions that the arbitration award was invalid because it was based on an illegal contract are properly resolved in the context of TRI's motion to vacate the award. We express no opinion on the merits of these issues.

REVERSED AND REMANDED.

